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RE: MUR 6249

Karen L. Pletz submits this Response to the Complaint filed by the Kansas City University of Medicine & Biosciences ("KCUMB"), which is dated January 22, 2010.

This Complaint is the latest attack by KCUMB in a contentious – and, for KCUMB, publicly embarrassing – employment dispute between it and Ms. Pletz, the former President and Chief Executive Officer of KCUMB. This dispute has nothing to do with political contributions, stipends, or alleged violations of the Federal Election Campaign Act ("FECA"). Rather, as explained below, KCUMB filed the Complaint in a futile attempt (one of many) to discredit Ms. Pletz as part of a larger effort to defend against potential IRS sanctions and a likely wrongful termination/breach of contract lawsuit by Ms. Pletz.

Further, the central allegation of the Complaint – that Ms. Pletz used part of her compensation (leadership stipend) to make illegal political contributions on behalf of KCUMB – is factually untrue, ignores critical facts and documents, and is based on a gross misreading of selected documents. In the end, the Complaint does not provide a "reason to believe" that a violation of FECA occurred. See 11 C.F.R. §111.9(b). The Complaint should be dismissed.

I. The Complaint Should Be Dismissed Because It Does Not Comply With The Filing Requirements

The FEC need not – and should not – consider the substance of the Complaint's allegations because the Complaint was defectively filed. In at least three material respects, the Complaint is defective because it does not comply with the filing requirements set by statute and regulation.

First, the Complaint was not "sworn to by the person filing such complaint," as required by 2 U.S.C. §437g(a)(1). The applicable regulation elaborates on this requirement stating that "[i]n ~~contents~~ of the complaint shall be sworn to[.]" 11 C.F.R. §111.4(b)(2). Howard D. Weaver – the Complaint's signatory – did not swear to the contents of the Complaint.

Weaver did not state, let alone swear, that the Complaint's contents were true and accurate. Nor did Weaver state, let alone swear, that he had any knowledge regarding the Complaint's allegations. Rather, Weaver swore only that he "executed" – signed – the Complaint. See Complaint at p.5, notary block ("...Howard D. Weaver, D.O., duly sworn to be the person described herein and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.") This is insufficient – swearing that he signed the Complaint is meaningless, and does not satisfy the requirements of §111.4(b)(2).

*Second*, and related to the first point, the Complaint is defective because it fails to "differentiate between statements based upon personal knowledge and statements based upon information and belief," as required by 11 C.F.R. §111.4(c).

*Third*, the Complaint is defective because it was not "made under penalty of perjury and subject to the provisions of section 1001 of Title 18." 2 U.S.C. §437g(a)(1). Conspicuously missing from Weaver's signature block and the notary block is any statement that the Complaint was made under penalty of perjury or subject to 18 U.S.C. §1001.

These filing requirements are not mere technical rules. The filing requirements are important and necessary because they force the complainant to state whether the allegations are based on knowledge (versus conjecture) and to stand behind the allegations under penalty of perjury. Here, Weaver was unwilling to swear to the truth of the Complaint's contents, swear that he has knowledge of the Complaint's allegations, or swear that the allegations were made under penalty of perjury. Because KCUMB and Weaver are unwilling to stand behind the Complaint's allegations, the Complaint is defective and the allegations should be given no weight. For these reasons alone, the defectively filed Complaint should be dismissed.

## **II. KCUMB Filed The Complaint As Part Of A Larger Effort To Discredit Ms. Pletz In An Attempt To Defend Against IRS Sanctions And An Impending Employment Lawsuit**

KCUMB hired Karen Pletz as its President and Chief Executive Officer in 1995. KCUMB is a non-profit osteopathic medical school that operates as a tax-exempt entity subject to the rules and constraints of §501(c)(3) of the Internal Revenue Code. Ms. Pletz served as KCUMB's President/CEO for 14 years. During her tenure, KCUMB increased its enrollment by 40%, achieved medical board pass rates of 100% (when they had been below the national average), increased the University's endowment from \$0 to \$70 million, and increased alumni giving rates from 2% to 33%.

In spite of these tangible and dramatic results, KCUMB's Board of Trustees ("Board") fired Karen Pletz on December 18, 2009. The firing was in response to an IRS audit of KCUMB that began in early 2009. Generally, IRS audits of non-profits – called Form 990 audits – focus on compensation and benefits paid to "disqualified persons," such as the non-profit's senior management. Upon information and belief, though the audit is ongoing, the IRS has criticized the compensation and benefits paid to Ms. Pletz as excessive. Importantly, for all years under IRS review, the Board and its Compensation & Benefits Committee reviewed and

approved Ms. Pletz's compensation.<sup>1</sup> In an October 20, 2009 Board meeting, tax counsel advised the Board members of their personal financial exposure in the audit. If the IRS ultimately determines that the compensation or other financial benefits paid to Ms. Pletz was excessive and that KCUMB thereby conferred an "excess benefit" on Ms. Pletz (26 U.S.C. §4958), the IRS may strip KCUMB of its tax exempt status and impose substantial monetary penalties on Ms. Pletz and the individual Board members, including Board Chair Howard D. Weaver, who signed the Complaint. See Mike Sherry, *IRS Audit May Prove Taxing for Kansas City University of Medicine and Biosciences*, KANSAS CITY BUS. J., Feb. 19, 2010, attached as Exhibit 1.

On October 20, 2009, the same day that Board members were notified of their personal IRS exposure, the Board formed a special committee to investigate Ms. Pletz and others. The special committee was ostensibly created to investigate the tax issues (e.g., compensation paid to Ms. Pletz) and other anonymous allegations that had been previously investigated, vetted, and found to be without merit in 2007 by the Board's Audit Committee. The 2009 investigation was a sham and the outcome was predetermined. Just weeks after the special committee was formed, the Board terminated or forced out virtually all of the executive management team, including Ms. Pletz. The terminations and forced resignations were a transparent attempt by the Board to create cover for the individual Board members and find scapegoats for KCUMB's potential tax problems in the hopes of avoiding personal IRS penalties. Suffice to say, the Board did not have cause to terminate Ms. Pletz, and its actions amount to wrongful termination and a breach of her employment agreement.

This Complaint is a frivolous and mean-spirited attempt by KCUMB to discredit Ms. Pletz. The thought being that if enough stuff (using a less colorful term) is thrown against the wall, maybe something will stick. And if something sticks, then KCUMB and the individual Board members will be in a better position (in their view) to defend against IRS sanctions and a likely wrongful termination lawsuit filed by Ms. Pletz.

### **III. There Is No Evidence That Karen Pletz Made Political Contributions On Behalf Of KCUMB**

#### **A. No correlation exists between the payments received by Ms. Pletz and the political contributions made by Ms. Pletz**

Under penalty of perjury: Karen Pletz categorically denies that she directly or indirectly made political contributions on behalf of KCUMB. Pletz Affidavit at ¶2, attached as Exhibit 2. Ms. Pletz categorically denies that she used university funds to make political contributions. *Id.* at ¶3. Ms. Pletz categorically denies that as a condition of receiving any part of her compensation, including the leadership stipend, she was obligated or expected to make political contributions. *Id.* at ¶4. Ms. Pletz states that all political contributions that she made

<sup>1</sup> In fact, in October 2008, the KCUMB Board extended President Pletz's employment agreement for five years and gave her a substantial raise.

were of her own free will and to candidates or causes that *Ms. Pletz* individually supported. *Id.* at ¶5.

The Complaint does not present evidence to refute these fundamental facts. And the Complaint omits other facts and documents that are critical to the issue. The Complaint's central allegations are that KCUMB paid *Ms. Pletz*, as part of her *compensation*, \$42,000 in 1999 and a "leadership stipend" in subsequent years, and that *Ms. Pletz* used these amounts to make political contributions on behalf of KCUMB. *See* Complaint at 2-3. The contemporaneous documents, however, tell a different story.

The following table compares, for years 1998-2009, the leadership stipend that *Ms. Pletz* received to the federal political contributions that she made. The information in the table is based on the Complaint's exhibits B and I, as well as Exhibits 3 through 8 that are attached to this Response. Exhibits 3 through 8 are minutes of meetings of the "Executive Committee, encompassing the Compensation and Benefits Committee," that occurred in 2002, 2003, and 2005-2008.<sup>2</sup>

	<u>Leadership Stipend</u>	<u>Political Contributions (See Complaint at Ex. J.)</u>
1998	\$0 <sup>1</sup>	\$1,000
1999	\$42,000	\$1,000
2000	\$[amount not determined] <sup>2</sup>	\$2,500
2001	\$[amount not determined]	\$0
2002	\$60,000 (See Ex. 3)	\$0
2003	\$180,000 (See Exs. 3, 4)	\$0
2004	\$66,000 (See Ex. 4)	\$5,000
2005	\$65,000 (See Ex. 5)	\$0
2006	\$195,000 (See Exs. 5, 6)	\$1,250
2007	\$195,000 (See Exs. 6, 7)	\$3,950
2008	\$195,000 (Exs. 7, 8)	\$500
2009	\$130,000 (Ex. 8)	\$500
<b>TOTAL:</b>	<b>\$1,128,000 (minimum)</b>	<b>\$15,700</b>

<sup>2</sup>*Ms. Pletz* is no longer employed at KCUMB and, as a result, does not have access to the university's records and files. However, during the special committee investigation, counsel for the special committee (Polsinelli Shughart) produced a limited set of documents to *Ms. Pletz*'s counsel. This limited production included Exhibits 3-8. For purposes of this Response, we assume that Exhibits 3-8 were produced from KCUMB's records and that the documents are authentic and accurate. As Exhibits 3-8 indicate, *Ms. Pletz* was not a member of the Executive Committee or Compensation & Benefits Committee and, therefore, did not attend the meetings or prepare the minutes (Exhibits 3-8).

<sup>3</sup>We have searched all documents produced by special committee counsel and have not found other Executive Committee or Compensation & Benefits Committee minutes evidencing payment of other leadership stipend amounts. However, it is *Ms. Pletz*'s best recollection that she received leadership stipend payments in 2000 and 2001, and that she received more than \$60,000 in 2002, more than \$66,000 in 2004, and more than \$65,000 in 2005.

This table illustrates the absurdity of the Complaint's allegations. Ms. Pletz received \$1,128,000 (minimum) in the form of a compensatory leadership stipend but only made \$15,700 in federal contributions. These numbers do not support the theory that the purpose of the leadership stipend was to allow Ms. Pletz to make illegal political contributions on behalf of KCUMB.

Beyond the obvious disparity between the amount received and the amount contributed, the above table demonstrates the lack of temporal correlation between the two:

- Some years Ms. Pletz made political contributions but did not receive a stipend (2000).
- Some years Ms. Pletz received a stipend but did not make political contributions (2001, 2002, 2003, 2005).
- Some years Ms. Pletz received a sizeable stipend but only contributed nominal amounts (1999, 2006, 2008, 2009).

This lack of correlation between the leadership stipend payments received and political contributions made hardly evidences an illegal plan by Ms. Pletz to make contributions on KCUMB's behalf. Indeed, the lack of correlation evidences just the opposite.

Further, as reflected in the Executive Committee minutes (Exhibits 3-8), there was no obligation – or even the suggestion – that Ms. Pletz use the leadership stipend portion of her compensation to make political contributions. The Executive Committee approved the leadership stipend payments “in recognition of enhanced commitments inherent in her key civic leadership roles in the community which broaden the University's influence and are to its benefit.” See Exs. 3-8. Ms. Pletz's civic leadership roles included serving on the boards of various business organizations (e.g., chamber of commerce; civic council) and healthcare organizations (e.g., Midwest Research Institute). *Id.* Thus, the leadership stipend portion of Ms. Pletz's compensation was a *backward-looking* payment given for exactly what its title implies – recognition of leadership in the community. There was nothing illegal about KCUMB recognizing Ms. Pletz for her involvement in the community.

Finally, in being noting that Ms. Pletz was paid the leadership stipend as part of her regular compensation, it was reported on her W-2 forms and federal income tax returns, and it was taxed as ordinary income. Thus, all of Ms. Pletz's political contributions, which are First Amendment activity, were made personally by Ms. Pletz with her own after-tax dollars.

**B. The Complaint's “factual” allegations are based on speculation and a misreading of selective documents**

The Complaint does not attach the Executive Committee minutes (Exhibits 3-8) nor address the substance of the minutes. Instead, the Complaint cobbles together out-of-context excerpts from other documents in an attempt to support the theory that Ms. Pletz made illegal contributions on KCUMB's behalf. These documents are addressed in turn.

**1999 Memorandum (Complaint Exhibit A)**

The Complaint's reliance on the 1999 memorandum is misplaced. Ms. Pletz drafted the memorandum more than 10 years ago. And while the memorandum was addressed to then-Board Chairman Jack T. Weaver, the Complaint cites no evidence that he ever received it.<sup>4</sup> Assuming Jack Weaver received the memorandum, it is not the nefarious document that KCUMB portrays it to be. The last sentence of the memorandum states in unambiguous terms: "The President [Pletz], in turn, may lawfully make *personal* contributions *as she deems appropriate*." *Id.* at 3. This summarizing sentence, which the Complaint ignores, was, and is, a correct statement of the law. Ms. Pletz was free to make "personal contributions" to political candidates and causes "as she deem[ed] appropriate."

Even if the memorandum is misread to suggest a plan to make illegal contributions (which Ms. Pletz denies), the fact remains that such a plan was not carried out. KCUMB never paid a "housing stipend" to Ms. Pletz in 1999 or at any other time. And even the Complaint concedes that the Executive Committee and Board minutes make no mention of the 1999 memorandum or a "housing stipend." See Complaint at Exs. B, C. Rather than this being evidence of an illegal plan, as the Complaint implies, the minutes' lack of reference to the memorandum or "housing stipend" is evidence that such a plan never existed.

Further, as noted in the table above, while Ms. Pletz received \$42,008 in 1999, she did not make political contributions anywhere close to this amount. Ms. Pletz made contributions of \$1,000 in 1999, \$2,500 in 2000, and \$0 in 2001. These numbers do not lie, and the lack of correlation between the payment and the contributions disproves that the \$42,000 was used, or intended to be used, by Ms. Pletz to circumvent FECA.

**November 2009 Report of the President (Complaint Exhibit H)**

The Complaint quotes half of a sentence from a report given by Ms. Pletz to the Board of Trustees in November 2009. What the Complaint deceptively omits are the three sentences that follow the half-quote:

*This initiative is a strong example of the effectiveness of KCUMB's community investment and of the leadership stipend. As a 501C3 organization, the institution cannot lawfully make or direct political contributions to individual candidates or legislators. However, I have always believed that I had a personal responsibility to support legislative leadership in higher education, medical education, and health policy.*

<sup>4</sup>In addition to the frivolous allegations against Ms. Pletz, KCUMB points the finger at former Board Chairman Jack T. Weaver, the father of Howard D. Weaver who signed the Complaint, accusing him of engaging in a plan to funnel money to Ms. Pletz to make illegal contributions. The allegations against Jack Weaver are both false and highly inappropriate. Jack Weaver, who stepped down as Board Chairman in 2004 after years of service, is no longer living and cannot defend himself against KCUMB's and his son's spurious accusations.

See Complaint at Ex. H, p.6 (emphasis added). This quote, taken from the President's Report, is a correct statement of the law: while there is a prohibition on tax exempt organizations (like KCUMB) from directly or indirectly making political contributions to candidates, there is no prohibition on individuals (like Karen Pletz) from making personal political contributions. Indeed, Ms. Pletz has a First Amendment right to contribute personally to political causes and candidates. This President's Report is not evidence of a violation of FECA.

#### Text Message (Complaint Exhibit I)

We cannot confirm the authenticity or accuracy of the purported text message attached as Exhibit I to the Complaint. The message appears to have been sent from a phone number with a 407 area code (Orlando) to an email address — <sup>1</sup> Harvard D. Weaver, current Board Chair, resides in Orlando and has a 407 area code phone number, and Weaver's email address is

In any event, Ms. Pletz, whose cell phone has an 816 area code, recalls sending a text message to Weaver in December 2009 requesting that he approve disbursement of a lump sum payment of the leadership stipend. In the text message, Ms. Pletz referenced legislation impacting medical education that Ms. Pletz expected would be taken up by the Missouri General Assembly.<sup>5</sup> Weaver responded to the text message, giving his approval for disbursement of the lump sum payment. Upon information and belief, Weaver then contacted an individual in KCUMB's administration office and instructed the individual to make the disbursement to Ms. Pletz. (The Complaint conveniently fails to attach Weaver's response to Ms. Pletz's text message. Ms. Pletz is unable to obtain copies of her text message to Weaver or his response.)

Assuming *arguendo* that Exhibit I is the text message sent by Ms. Pletz to Weaver (which may be a false assumption to make), the text message clearly states that Ms. Pletz's political contributions are "personal contributions" and "not in any way directed by [KCUMB]." This accurately reflects what the law allows and is not evidence of an illegal political contribution.

#### IV. The FEC Should Decline To Investigate This Matter For Policy Reasons

Beyond the factual and legal arguments, we suggest that the FEC, as a matter of policy, dismiss this matter because it does not merit further use of FEC resources. See "Guidebook for Complainants and Respondents on the FEC Enforcement Process" at 12 (Dec. 2009) (outlining relevant policy factors in deciding whether to investigate possible violations). First, the maximum amount of contributions that could possibly be at issue here is nominal — \$6,200.<sup>6</sup> Second, if read closely, the Complaint does not actually allege a specific violation of

<sup>5</sup> See *McConnell v. FEC*, 540 U.S. 93, 122 (2003) (FECA does not extend to contributions "made solely for the purpose of influencing state or local elections"); *Emily's List v. FEC*, 381 F.3d 1, 20 (D.C. Cir. 2000) ("TLC's authority extends only to regulating donations and expenditures made 'for the purpose of influencing any election for federal office.'")

<sup>6</sup> Applying 28 U.S.C. §2462, pre-2005 political contributions are outside the five year statute of limitations. Since 2005, Ms. Pletz's contributions total \$6,200. See Complaint at Ex. J.

FECA. That is, the Complaint does not tie a specific leadership stipend payment to a specific political contribution. Third, the Complaint's allegations are weak, in that they are based on unsworn speculation and a misreading of out-of-context excerpts from selected documents. Fourth, as demonstrated by this Response, Ms. Pletz strongly denies that any violation occurred and is prepared to vigorously defend, if necessary. Lastly, to the extent the FEC suspects that a violation might have occurred (which we strongly deny), it should be noted that Ms. Pletz is no longer employed at KCUMB (or any 501(c)(3)) and, therefore, there is no reasonable possibility that such a violation would be repeated.

**V. Conclusion: There Is No "Reason To Believe" That A Violation Has Been Committed**

Karen Pletz respectfully requests that the FEC decline to investigate and dismiss this matter. The Complaint should be dismissed because it does not meet the filing requirements set by statute and regulation. But, even if the FEC considers the substance of the Complaint, which is simply part of a larger effort to manufacture positions in the dispute between KCUMB and Ms. Pletz, the Complaint fails to present evidence sufficient to find a "reason to believe" that a violation of FECA has occurred. The Complaint's allegations are hyperbole supported by unsworn speculation and a gross misreading of selected documents. This Response rebuts – conclusively – each of the Complaint's allegations and proves the lack of correlation between the compensatory leadership stipend received and the political contributions issue. Finally, the FEC should decline to investigate this matter for policy reasons.

Respectfully submitted,

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*Counsel for Karen L. Pletz*

Cc: Karen L. Pletz



# Exhibit 1

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**IRS audit may prove taxing for Kansas City University of Medicine and Biosciences**

School's tax-exempt status may be at risk

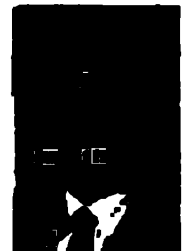
Kansas City Business Journal • by [Mike Sherry](#), Staff Writer

An Internal Revenue Service audit of Kansas City University of Medicine and Biosciences could impose financial penalties on its trustees personally and threaten the school's tax-exempt status.

The university has confirmed that the IRS is auditing tax returns for 2006 through 2008. University spokeswoman Laurie Roberts said the school has requested an extension until May to file last year's return.

The school's interim CEO, Dr. Dariusz Wnuk, who also is board chairman, said the IRS has told him not to discuss the issues involved with the audit. IRS spokesman Michael Davine said he could not comment on specific tax-return information.

But IRS "excessive benefit" regulations conceivably could apply to the university's situation, said Errol Coplevitz, a Kansas City lawyer whose firm specializes in representing charities, and David Renz, director of the Midwest Center for Nonprofit Leadership at the University of Missouri-Kansas City.



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